



DEPARTMENT OF THE ARMY
HEADQUARTERS, UNITED STATES ARMY FORCES COMMAND
1777 HARDEE AVENUE SW
FORT MCPHERSON, GEORGIA 30330-1062

4 August 1997

REPLY TO
ATTENTION OF

AFRM

MEMORANDUM FOR

Commanders, CONUSA/Major Subordinate Commands
Commanders, FORSCOM Installations
Commander, Third United States Army
Chiefs, Primary and Secondary Staff Agencies, Headquarters U.S.
Army Forces Command

SUBJECT: Processing of Proposed Waivers to Regulatory and Legal
Barriers

1. This memorandum provides guidance on the revised methods for processing waivers to regulatory or legal barriers to achieve greater efficiency in FORSCOM operations. Of special interest are the changes to expedite test waivers to Army Regulations (AR), Defense Federal Acquisition Regulation Supplement (DFARS), and Federal Acquisition Regulation (FAR). Specific instructions are provided at the enclosure.
2. Forces Command remains the Department of Defense leader in eliminating red tape by waiving or obtaining waivers to regulatory and legal barriers. However, we need to do even more. With this in mind, I charge you to make substantial changes in the way we do business and to help me disseminate those success stories. The key is to be innovative - to try many ideas, keep what works, discard what does not, and provide our entire community with the results, whether positive or negative.
3. While our immediate goal is to maximize efficiencies, our continuing objective is mission readiness. Now more than ever, readiness depends on doing business smarter.

Encl

A handwritten signature in black ink, reading "David A. Bramlett".

DAVID A. BRAMLETT
General, USA
Commanding

WAIVER PROCESSING STANDARD OPERATING PROCEDURE

1. References:

- a. Memorandum, Secretary of the Army, 14 Aug 95, subject: Revised Waiver Authority for Army Reinvention Centers and Laboratories.
- b. Memorandum, Director, Defense Procurement, DP (DAR), 9 Dec 93, subject: Reinvention Laboratories.
- c. Memorandum, HQ Forces Command, AFCG, 28 Aug 95, subject: DOD Waiver Authority for Army Reinvention Centers and laboratories.

2. General Instructions. The FORSCOM Intranet will be used to identify a waiver to a FORSCOM regulation; request permission to conduct a test for waiver of an Army Regulation, Defense Federal Acquisition Regulation Supplement, or Federal Acquisition Regulation; forward a request to waive a Department of Defense regulation or other agency regulation; or request a change to a public law. The Installation Commander is the only individual who can authorize these actions. Two people per installation will be given authority to write to the FORSCOM Intranet--use of Windows 95 Internet Explorer is required. The FORSCOM Intranet home page (address: <http://freddie-forscom.army.mil:2010/>) provides specific instructions. This methodology allows our entire community to observe and comment on the test. The Intranet or e-mail to the Reinvent mail box (address: reinvent@ftmcpnsn-emhl.army.mil) may be used to propose a non-test waiver.

3. Waiving FORSCOM Regulations. Installation Commanders have been granted the authority to waive FORSCOM regulations in accordance with the FORSCOM Reengineering OPORD (Jan 95), page 2, paragraph 2d which states: "...commanders can waive FORSCOM regulations, but must inform the FORSCOM Chief of Staff of these waivers...". This guidance is supplemented as follows:

- a. The Installation Commander will approve all waivers to FORSCOM regulations.
- b. The waiver must specify the barrier being waived, benefits to the Command, and include a detailed legal opinion signed by the SJA. The legal opinion will address whether the action or request is within the scope of the Command's authorities. The analysis will identify whether the regulatory provision in question is required by statute or higher executive branch promulgation and, if so, will

identify the applicable statute/promulgation. A signed copy by the senior legal officer will be locally maintained.

c. The Intranet is the preferred method for submission to HQ FORSCOM, but e-mail to the Reinvent mail box (address: reinvent@ftmcpshsn-emhl.army.mil) is also acceptable.

4. Proposing Test Waivers to ARs/Policies.

a. General. No test is to be started without prior approval of the HQ FORSCOM Chief of Staff. Additionally, before forwarding the proposed test for HQ FORSCOM disposition, the Installation Commander must approve the initiative; this authority cannot be delegated. Installations proposing waivers to Army regulations must be prepared to test the waiver. The steps in paragraph 4b below must also be adhered to before HQ FORSCOM will consider the proposal to test a waiver of an AR.

b. Specific instructions for requesting approval to test a waiver to an AR are provided at the FORSCOM Intranet home page (address: <http://freddie-forscom.army.mil:2010/>). At a minimum, the following must be completed:

(1) Title. Provide a short, descriptive title of the initiative.

(2) Current Process. Briefly describe the current process. If available, provide process mapping diagrams (this is optional). List all regulatory barriers by specifying the actual paragraphs within the regulations that govern the process. Of critical importance is the in-depth legal which must be personally signed by the installation senior legal officer (normally the SJA). The legal opinion will address whether the action or request is within the scope of the FORSCOM Commanding General's authority to waive Department of Army regulations/instructions. It will also identify whether the regulatory provision in question is required by statute or higher executive branch promulgation and, if so, will identify the applicable statute/promulgation. If the action involves waiving a DOD Directive or Instruction (either directly

or because the Army Regulation in question merely restates a requirement from a DOD Directive or Instruction), the analysis will address whether the DOD Directive or Instruction is or is not within the scope of the Secretary of the Army's delegated waiver authority. Though the signed copy will be maintained

locally, an electronic copy of the servicing SJA analysis will be submitted to HQ FORSCOM with the request.

(3) Proposed Process. Provide a brief description of the proposed process. Include potential benefits, proposed measures of effectiveness that will be collected to document test results, and a proposed timeline for conducting the test.

c. While the Secretary of the Army has delegated to the CG, FORSCOM, the authority to waive Department of Army Regulations and Instructions, the following prohibitions apply:

(1) Regulations/instructions (and policies) that address adverse action against or rights and benefits of soldiers and/or civilian employees (including NAF employees) may not be waived.

(2) Regulations, instructions, and policies which address equal opportunity and equal employment opportunity may not be waived.

(3) Provisions of regulations/instructions that merely restate requirements imposed by statute, executive order, executive branch-wide regulations, such as those of the OMB, or DOD Directives or Instructions may not be waived.

(4) Provisions of a regulation/instruction that have the status of a "legislative regulation or issuance" may not be waived.

(5) Provisions required by law may not be waived.

(6) The waiver authority may not be used so as to augment, without further action by HQDA, resources such as manpower, facilities, money, or equipment provided to FORSCOM and its subordinate units/installations.

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(7) Testing waivers to unit/individual readiness and unit movements is prohibited. Requests for waiver of unit/individual readiness or unit movements must be forwarded to HQ FORSCOM for disposition.

d. HQ FORSCOM Deputy Chief of Staff for Resources and Evaluation (DCSRE) is responsible for ensuring the submission is complete.

(1) To ensure that the proposal is complete and that all regulatory barriers have been identified, DCSRE will forward the initiative to the HQ FORSCOM functional proponent to validate the barrier(s) listed and then forward to HQ FORSCOM SJA for review. The staff will provide a recommended disposition with justification to DCSRE for presentation to the HQ FORSCOM Chief of Staff. The disposition will normally be provided to installations within fifteen working days from receipt on the Intranet and will include one of the following: sanction a test, forward to HQDA for wider implementation, waive across the Command without testing, or disapprove the test. The HQ FORSCOM Chief of Staff may grant an extension to the functional proponent or the SJA for purposes of additional research into a complex issue or writing an opinion. In the case of an extension, the installation will be immediately notified.

(2) If the proposal is incomplete, it will be returned via the Intranet to the contributing installation for additional information.

(3) Upon approval, information regarding the test will be placed on the Intranet to allow the entire community an opportunity to review and comment. However, no other installation except the contributor is sanctioned to conduct a test.

e. As required by reference 1a, HQ FORSCOM must inform HQDA that a waiver is being tested.

f. Upon completion of the test, the installation will submit the test results and a recommendation, the impact on the measures of effectiveness, and other pertinent data to HQ FORSCOM.

g. Final waiver authority remains with the FORSCOM Commander.

5. Proposing Tests to Waive Defense Federal Acquisition Regulation Supplement (DFARS) and Federal Acquisition Regulations (FARS). DFARS and FARS are the only other regulations that can be waived by the FORSCOM Commander and, as such, are the only other regulations that can be proposed for testing. No test is to be started without prior approval of the HQ FORSCOM Chief of Staff. The Installation Commander must also approve all proposals to test; this authority can not be delegated. Additionally, installations proposing waivers to DFARS and FARS must be prepared

to test the waiver. Installations must adhere to the following steps before HQ FORSCOM will consider the proposal to test a waiver of the DFARS or FARs:

a. The test waiver parameters are identical to those outlined in paragraph 4 above.

b. In accordance with reference 1b, testing of the following is prohibited:

(1) Deviations that have significant effect beyond the internal operating procedures of the agency or those that have a significant cost or administrative impact on contractors or offerors.

(2) Deviations that are identified in DFARS 201.402(1)(i) (Procurement Integrity, Rights in Data and Copyrights; Applicability of Cost Principles; Contracts with Commercial Organizations; or Contract Financing).

(3) Requirements imposed by statute or those that implement the regulations or directives of other agencies (e.g., Small Business Administration, Department of Labor).

6. Proposed Change To Other Regulatory Barriers. Authority has not been granted to this Command to waive non-DFARS DOD regulations, policies, directives, issuances, and procedures. Further, the Command does not have the authority to change regulations of the Office of Personnel Management, Office of Management and Budget, or other Federal agencies. Guidance on requesting these waivers is as follows:

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a. The same data required in paragraph 4b needs to be submitted in proposing changes to barriers that are outside the HQ FORSCOM Commanding General's authority to waive.

b. As with all waiver proposals, the Installation Commander must approve the request to obtain a waiver.

c. Proposed waivers will be placed on the FORSCOM Intranet or forwarded to DCSRE by e-mail to the Reinvent mail box (address: reinvent@ftmcphsn-emhl.army.mil).

d. HQ FORSCOM DCSRE will ensure that the submission is complete.

(1) If the proposal is incomplete, DCSRE will return it to the contributing installation for additional information.

(2) If the proposal is complete, DCSRE will forward the initiative to the HQ FORSCOM functional proponent, SJA, and other staff, as appropriate. The HQ FORSCOM staff will complete the following:

(a) Issue Statement.

(b) Specific Action Requested.

(c) Originator of the Issue.

(d) Relationship to the Command's Strategic Business Plan and the Installation Strategic Business Plan.

(e) Pros and Cons.

(f) Barriers/Inhibitors (laws, regulations, policies, culture, etc.).

(g) Risks (long-term to Army or FORSCOM).

(h) Staff Recommendation. Provide a coordinated recommendation with justification to DCSRE for presentation to the HQ FORSCOM Chief of Staff. Disposition will include one of the following: obtain a waiver to test at selected sites, seek a waiver to implement the change across the Command, or disapprove.

(3) DCSRE will provide the HQ FORSCOM response to the contributor and keep the rest of the Command and HQDA informed. The HQ FORSCOM staff will develop any required functional memorandum and supporting data to be forwarded to HQDA.

7. Proposed Change To Public Law.

a. General. As with all waiver proposals, the Installation Commander must approve the proposal.

(1) Proposed changes to public laws or proposals for new legislation are outside the HQ FORSCOM Commanding General's authority to waive. Requests for legislation are appropriate when the

provisions of existing statutes, or the absence of a statute providing authority, preclude or unnecessarily hinder adoption of the most efficient and effective organization and practices at FORSCOM installations. Requests for legislation are not appropriate when the desired outcome can be obtained through waiver, recission, change, or promulgation of Executive Branch regulations at any level. The Executive Branch has, at times, limited the exercise of its authority as a result of language contained in reports accompanying previously enacted legislation. If the "report language" is an impediment to reengineering, a request for legislation may be appropriate, even if technically not required as a matter of law.

(2) There are basically two types of requests for legislation:

(a) Requests for modification or repeal of laws that impede desired practices and/or organizations (removing roadblocks); and

(b) Requests for enactment of a law to allow desired practices and/or organizations not authorized under existing law (granting new authority).

(3) Both types of requests can result in dramatic change. The second is more challenging to formulate, more conducive to truly breaking paradigms and getting out of the "box" of existing practices, and more valuable in the long run. Legislative requests of the second type also facilitate a true partnership approach between the Executive Branch and Congress within the framework of the

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National Performance Review and the Defense Performance Review. Accordingly, while both types of requests will be necessary, the main focus of creative thought should be on positive, empowering enactments granting broad new authority.

(4) The Office of Management and Budget (OMB) is responsible for the overall Executive Branch legislative program. Its role is to coordinate legislative proposals among interested agencies, ensure that proposals are consistent with the overall program of the Administration, and coordinate Executive Branch positions on legislative proposals originating in Congress. The Office of the DOD General Counsel, in conjunction with the Assistant Secretary of Defense (Legislative Affairs) and the DOD Comptroller, has parallel responsibilities at the OSD level. With responsibility for the overall Army legislative program, the Office of the Chief of

Legislative Liaison (OCLL) coordinates proposals with the Army General Counsel, Office of the Judge Advocate General (OTJAG), functional proponents in the DA Secretariat and on the Army Staff and, as a result of the Reinvention Center designation, the CG FORSCOM. As an exception to OCLL's overall responsibilities, the Assistant Secretary of the Army (Financial Management) is principally responsible for submissions considered as part of the Appropriation Act cycle, and the Assistant Secretary of the Army (Civil Works) is principally responsible for legislation relating to the civil works functions of the Corps of Engineers.

(5) There are four basic recurring HQDA programs for the submission of requests for legislation. These are:

(a) Legislation submitted as part of the annual Authorization Act cycle;

(b) Legislation submitted throughout the year as so-called "free standing" legislative proposals;

(c) Legislation submitted as part of the DOD "Omnibus Legislative Package" (usually merged by Congress with Authorization Act requests and considered as a single package); and

(d) Legislation (as distinct from funding levels) submitted as part of the annual Appropriation Act cycle. Appropriation legislation normally involves only authority to expend funds on otherwise authorized activities. Permanent legislation is not enacted in the Appropriation Act, although some provisions (normally prohibitions or restrictions on expending funds) tend to be reenacted each year (so-called "recurring provisions").

b. Format for submission of requests for legislation.

(1) Proposed changes to public law or new legislation will be placed on the FORSCOM Intranet or forwarded to DCSRE by e-mail to the Reinvent mail box (address: reinvent@ftmcpshn-emh1.army.mil).

(2) The following format will be used:

(a) SUBJECT: Request for Legislation

(b) SUBMITTED BY: (Specify the requesting command.)

(c) ACTION REQUESTED: (Brief statement of specific desired outcome. Avoid nonspecific requests.)

(d) NEED FOR LEGISLATION: (A brief narrative statement explaining why the legislation is needed. State what this will allow that cannot currently be done or what the installation will stop performing that is currently required. This statement will provide the basis for the formal statement submitted to Congress along with the proposal. It needs to be succinct, persuasive, and avoid jargon or acronyms. The statement should clearly express intended outcome.)

(e) ROLE IN COMMAND STRATEGIC BUSINESS PLAN AND THE INSTALLATION STRATEGIC BUSINESS PLAN: (A brief statement explaining how the requested legislation fits within the Command and installation Strategic Business Plans. If the requested legislation is relevant to an existing action being worked by HQ FORSCOM, specify the reengineering issue.)

(f) RELEVANT PROVISIONS OF EXISTING LAW: (If the request involves repealing or amending existing law, the specific provisions needs to be identified. Use the codified citation for codified provisions, and the public law citation for uncoded provisions.)

(g) POINT OF CONTACT: (Give the name, position, e-mail address, phone, and fax numbers of the individual who can provide additional detailed information about the request.)